# STATE OF MICHIGAN

# COURT OF APPEALS

CITICORP VENDOR FINANCE, INC.,

Plaintiff-Appellant,

v

TRILLIUM EYE PLASTIC SURGERY, P.C. and WILLIAM W. EHRLICH, M.D.,

Defendants-Appellees.

UNPUBLISHED
February 16, 2006

No. 256291
Ingham Circuit Court
LC No. 03-002088-cz

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court granting defendants' motion to preclude recognition of a foreign judgment. On July 9, 2002, plaintiff obtained a default judgment against defendants in the Superior Court of New Jersey, Burlington County. The action was commenced after defendants allegedly defaulted on a contract the parties[1] had entered into for the lease of certain medical equipment. The action was filed in New Jersey pursuant to a forum-selection clause contained in the lease. We reverse and remand. This case is being decided without oral argument under MCR 7.214(E).

Plaintiff contends the trial court erred in failing to accord full faith and credit to the New Jersey judgment when it refused to enforce the lease's forum-selection clause, which gave New Jersey courts personal jurisdiction over defendants. A foreign judgment is conclusive and must be recognized if jurisdiction has been obtained over the parties and the subject matter. *Nat'l Equip Rental, Ltd v Miller*, 73 Mich App 421, 424; 251 NW2d 611 (1977). Accordingly, a party may collaterally attack a judgment from a sister state court in a court of this state by "showing that the judgment sought to be enforced was void for want of jurisdiction in the court which issued it." *Delph v Smith*, 354 Mich 12, 16; 91 NW2d 854 (1958) (citation omitted).

Section 3 of the Uniform Enforcement of Foreign Judgments Act (UEFJA), MCL 691.1171 *et seq*., provides that a "foreign judgment" shall be treated "in the same manner as a

[1] Defendants originally signed the lease with Copelco Capital. Plaintiff is the successor-in-interest of Copelco Capital.

judgment of the circuit court, the district court, or a municipal court of this state." MCL 691.1173. Section 2 of the UEFJA provides that a "'foreign judgment' is any judgment decree, or order of a court of the United States or of any other court that is entitled to *full faith and credit* in this state." MCL 691.1172 (emphasis added). The Full Faith and Credit Clause of the United States Constitution requires that judgments from a particular state be given the same full faith and credit in every court within the United States as is given to it in the state of its rendition. US Const, art IV, § 1, cl 1. Its purpose is to avoid relitigation of issues previously decided by a foreign court. *Van Pembrook v Zero Mfg Co*, 146 Mich App 87, 100-101; 380 NW2d 60 (1985). "Nonetheless, . . . collateral attack [on a foreign judgment] may be made in the courts of this State by showing that the judgment sought to be enforced was void for want of jurisdiction in the court which issued it." *Johnson v DiGiovanni*, 347 Mich 118, 126; 78 NW2d 560 (1956); accord *Blackburne, supra* at 620-621. As *Jeffrey v Rapid American Corp*, 448 Mich 178, 185; 529 NW2d 644 (1995) observed:

> The Due Process Clause of the Fourteenth Amendment limits the jurisdiction of state courts to enter judgments affecting the rights or interests of nonresident defendants. As a result, a valid judgment affecting a nonresident's rights or interests may only be entered by a court having personal jurisdiction over that defendant. [Citation omitted.]

Therefore, the courts of this state are not obliged under the federal Constitution or the UEFJA to give a foreign judgment full faith and credit where an effective attack over the jurisdiction of the foreign court has been mounted. *California v Max Larsen, Inc*, 31 Mich App 594; 597-598, 187 NW2d 911 (1971).

The choice of law clause in the lease in issue clearly provides that the lease shall be governed by the laws of New Jersey. Our Supreme Court has observed that such provisions are valid unless (1) "the chosen state has no substantial relationship to the parties or the transaction," (2) "there is no reasonable basis for choosing that state's law[,]" or (3) if the application of the provision "'would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue[.]'" *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 126; 528 NW2d 698 (1995), quoting Restatement Conflict of Laws, 2d, § 187(2)(b), p 561(1988).

Defendants do not argue that any of these exceptions apply. Rather, citing *Vanderveen's Importing Co v Keramische Industrie M de Wit*, 199 Mich App 359; 500 NW2d 779 (1993), defendants argue that Michigan law governs because the lease was performed and executed in Michigan. However, there is no indication in *Vanderveen's* that the contract in issue included a choice of law provision. *Id.* at 362. Thus, *Vanderveen's* is distinguishable. Accordingly, New Jersey law applies. See *Offerdahl v Silverstein*, 224 Mich App 417, 419; 569 NW2d 834 (1997) (observing that "parties may . . . agree that all causes of action will be . . . subject to the law of a particular jurisdiction"); MCL 600.745.

New Jersey courts have consistently observed that forum-selection clauses are generally enforceable unless "they are the result of 'fraud or coercive bargaining power[ ]'[2] or if enforcement of the clause would 'be seriously inconvenient for the trial" . . . or if the clause violates a 'strong public policy of the local forum.'" *Copelco Capital, Inc v Shapiro*, 331 NJ Super 1, 4; 750 A2d 773 (2000), quoting *Shelter Systems Group Corp v Lanni Builders, Inc*¸ 263 NJ Super 373, 375; 622 A2d 1345 (1993). See also *Burger King Corp v Rudzewicz*, 471 US 462, 473 n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985); Restatement Conflict of Laws, *supra*, § 80, p 244.

Defendants do not argue that they were not bound by the contract and thus not bound by the forum-selection clause, *Blackburne, supra*, nor do they argue that they were not provided with adequate notice. Rather, defendants argue (1) that New Jersey is an inconvenient forum, (2) that the lease is an adhesion contract that resulted from an abuse of economic power, and (3) that the clause violates public policy.

New Jersey's "inconvenience" exception to the enforcement of a forum-selection clause

> does not apply in cases where geographic distance merely inconveniences production of non-party witnesses; rather, it is reserved for the situation where "trial in the contractual forum will be so gravely difficult and inconvenient that [the party] will for all practical purposes be deprived of his day in court." [*Copelco Capital, supra* at 4, quoting *Wilfred MacDonald, Inc v Cushman, Inc*, 256 NJ Super 58, 65; 606 A2d 407 (1992)[3] (internal quotations marks omitted by *Copelco Capital*).]

Defendants' argument that it had no contacts in New Jersey, that the lease was executed in Michigan, that the equipment in issue is located in Michigan, and that all relevant witnesses are located here does not identify circumstances that will effectively deprive defendants of their day in court. *Id.*

As for defendants' argument that the forum-selection clause was the result of an abuse of economic power, in *Caspi v Microsoft Network, LLC*, 323 NJ Super 118, 122-123; 732 A2d 528 (1999), the Superior Court of New Jersey cited the United States Supreme Court[4] for the

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[2] In Michigan, the notion that a contract may be rendered unenforceable simply because it is an "adhesion contract" executed between parties of disparate economic power has been rejected by our Supreme Court. *Rory v Continental Ins Co*, 473 Mich 457, 477; 703 NW2d 73 (2005) (observing that an adhesion contract "must be enforced according to its plain terms unless one of the traditional contract defenses applies").

[3] In *Kubis & Perszyk Assoc, Inc v Sun Microsystems, Inc*, 146 NJ 176, 192-193; 680 A2d 618 (1996), the New Jersey Supreme Court declared that forum-selection clauses in contracts subject to the Franchise Practices Act, NJ Stat Ann 56:10-1 *et seq.*, were presumptively invalid. The Franchise Practices Act does not apply to the case at hand.

[4] *Carnival Cruise Lines v Shute*, 499 US 585; 111 S Ct 1522; 113 L Ed 2d 622 (1991).

proposition "that a corporate vendor's inclusion of a forum selection clause in a consumer contract does not in itself constitute overweening bargaining power." Further, there is nothing in the record to show that an imbalance in size between the contracting parties "resulted in an inequality of bargaining power that was unfairly exploited by the more powerful party." *Id*. at 123. There is also no allegation or indication that defendants could not obtain the equipment in issue elsewhere, and given the conspicuousness of the forum-selection clause, it appears that defendants "'retained the option of rejecting the contract with impunity.'" *Id*., quoting *Carnival Cruise Lines v Shute*, 499 US 585, 585; 111 S Ct 1522; 113 L Ed 2d 622 (1991). Thus, as in *Caspi*, it is "impossible to perceive an overwhelming bargaining situation" here. *Id*.

Finally, defendants argue that the forum-selection clause violates Michigan's public policy. In support, they cite *First National Monetary Corp v Chesney*, 514 F Supp 649 (ED Mich, 1980). Citing the official comment to MCL 600.745(3)(d), *Chesney* concluded that the forum-selection clause in issue there was an adhesion clause imposed by the plaintiff brokerage firm on a party of unequal bargaining power. *Id*. at 655-656; see also Restatement Conflict of Laws, *supra*, § 187(2)(b), comment *g*, p 568 ("[A] fundamental policy may be embodied in a statute . . . which is designed to protect a person against the oppressive use of superior bargaining power."). In addition to the fact that decisions of Michigan's federal courts are not binding on our state courts, cf. *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004), *Chesney* persuasive authority was seriously undermined by *Rory*. *Rory* specifically held that unless an adhesion

> provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. We reiterate that the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of "reasonableness" as a basis upon which courts may refuse to enforce unambiguous contractual provisions. [*Rory, supra* at 461.]

Here, the forum-selection provision clearly indicates the forum in which an action must be brought. Compare *Copelco Capital, supra* at 5 with *Shelter Systems Group, supra* at 375. The provision is conspicuous and presented in the same style and format as most other provisions in the lease. See *Caspi, supra* at 125. Under these circumstances, enforcement of the provision does not violate Michigan public policy.

Finally, the trial court's observation that plaintiff will receive a fair hearing of its complaint here in Michigan should not inform the decision. Certainly, both Michigan and New Jersey afford the opportunity to effectively and fairly resolve this dispute. However, the issue before the Michigan judiciary is whether the parties' choice of effective forums is enforceable. For the reasons set forth above, the forum-selection clause is enforceable.

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald